

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RODOLFO A. CONTRERAS, ) Case No.: 1:19-cv-01785-JLT (HC)  
Petitioner, )  
v. ) ORDER DISMISSING FIRST AMENDED  
PEOPLE OF THE STATE OF CALIFORNIA, ) PETITION AND DIRECTING PETITIONER TO  
Respondent. ) FILE A SECOND AMENDED PETITION  
 ) [THIRTY-DAY DEADLINE]  
 )  
 )

Petitioner filed a federal habeas petition in this Court on December 23, 2019. (Doc. 1.) After conducting a preliminary screening, the Court found the petition failed to name the proper respondent. (Doc. 6.) The Court dismissed the petition with leave to file an amended petition. (*Id.* at 3.) Petitioner filed a first amended petition on February 14, 2020. (Doc. 7.) A review of the amended petition reveals that the petition fails to state a cognizable federal claim for relief. Therefore, the Court will dismiss the amended petition and direct Petitioner to file a second amended petition.

## I. DISCUSSION

## A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court . . . .” Rule 4; *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory

1 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,  
2 either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an  
3 answer to the petition has been filed.

4       B. Failure to State a Cognizable Federal Claim

5       The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

6       The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an  
7       application for a writ of habeas corpus in behalf of a person in custody pursuant to a  
8       judgment of a State court *only on the ground that he is in custody in violation of the  
Constitution or laws or treaties of the United States.*

9 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States  
10 District Court. The Supreme Court has held that "the essence of habeas corpus is an attack by a  
11 person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475, 484  
12 (1973).

13       To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the  
14 adjudication of his claim in state court

15       (1) resulted in a decision that was contrary to, or involved an unreasonable application  
16       of, clearly established Federal law, as determined by the Supreme Court of the United  
17       States; or (2) resulted in a decision that was based on an unreasonable determination of  
18       the facts in light of the evidence presented in the State court proceeding.

19       28 U.S.C. § 2254(d)(1),(2). In addition to the above, Rule 2(c) of the Rules Governing Section 2254  
20 Cases requires that the petition:

- 21       (1) Specify all the grounds for relief available to the petitioner;  
22       (2) State the facts supporting each ground;  
23       (3) State the relief requested;  
24       (4) Be printed, typewritten, or legibly handwritten; and  
25       (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for  
26       the petitioner under 28 U.S.C. § 2242.

27       Petitioner has failed to comply with Rule 2(c) by failing to state how the adjudication of his  
28 claims in state court resulted in a decision that was contrary to, or an unreasonable application of,  
claims in state court resulted in a decision that was contrary to, or an unreasonable application of,  
clearly established Supreme Court authority. Therefore, Petitioner fails to state a cognizable federal  
habeas claim and the petition must be dismissed. Petitioner will be granted an opportunity to file a  
second amended petition to cure this deficiency. Petitioner is advised that he should entitle his

1 pleading, "Second Amended Petition," and he should reference the instant case number.

2 **II. ORDER**

3 Accordingly, the Court ORDERS:

- 4 1) The first amended petition is DISMISSED; and  
5 2) Petitioner is GRANTED thirty days from the date of service of this order to file a second  
6 amended petition that complies with this Order.

7 **Petitioner is forewarned that his failure to comply with this Order will result in a**  
8 **recommendation that the petition be dismissed pursuant to Local Rule 110.**

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10 IT IS SO ORDERED.

11 Dated: February 27, 2020

12 /s/ Jennifer L. Thurston  
13 UNITED STATES MAGISTRATE JUDGE

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